

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Streamlining Broadcast EEO Rule and Policies,)
Vacating the EEO Forfeiture Statement)
and Amending Section 1.80 of the Commission's)
Rules To Include EEO Forfeiture Guidelines)

MM Docket No. 96-16

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REPLY COMMENTS OF AMERICAN WOMEN IN RADIO & TELEVISION, INC.

American Women in Radio & Television, Inc ("AWRT") hereby submits its reply to the comments filed regarding the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding. The comments filed reveal a lack of consensus on appropriate streamlining proposals for the equal employment opportunity rules ("EEO Rules"). This lack of consensus demonstrates the need for the Commission to transform this proceeding into a negotiated rulemaking. A negotiated rulemaking will permit the Commission, broadcasters, and sources of recruitment, such as AWRT, collectively to address revamping the EEO Rules.

Significantly, the comments filed by broadcasters in response to the Notice do not universally support the streamlining proposals contained in the Notice. Also lacking from the comments is persuasive evidence quantifying or providing specific detail on the burden of compliance with the EEO Rules.¹ Demonstration of any burden of compliance with the EEO

¹ While some commentors indicate that they have had to require staff to assume the additional responsibility of EEO compliance the comments do not present consistent or persuasive evidence on the time required for EEO compliance or the magnitude of effort that must be undertaken. *See e.g.* KITO Comments. The Second Circuit previously has held that generalized

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Rules is particularly lacking regarding the recruitment of women employees.

In general, the comments filed by broadcasters who seek revisions to the EEO Rules express a frustration that recruitment efforts have not produced employees or that employees that have been hired have subsequently moved to stations in larger markets. The response to this frustration is not to stop trying but rather to improve the recruitment process. As the Commission repeatedly stressed in the Notice, the rules are efforts-based not results-based. Frustration with the recruitment process can be reduced by improving and updating recruitment tools through use of technology and innovative recruitment approaches. The comments demonstrate that improved communication between broadcasters and sources of recruitment, such as AWRT, could go a long way to reducing the frustration that some broadcasters experience in complying with the EEO Rules.

I. The Comments Filed Do Not Universally Support the Streamlining Proposals

The comments filed by broadcast stations in response to the Notice are widely divergent in opinion on the burden and effect of the EEO Rules. One owner of a station in Texas believes that, if adopted, the streamlining rules in the Notice would result in “even fewer minorities exposed to the medium of radio and television.”² KHRN’s comments refute the claim that compliance with the EEO Rules is burdensome for stations that make concerted efforts to recruit good quality people.³ Other commentators draw overly broad and generalized conclusions from

allegations of burden are insufficient to support further streamlining of the Commission’s EEO rules for broadcast stations based on size. *See Office of Communication of The United Church of Christ v. FCC*, 560 F.2d 529, 534-35 (2nd Cir. 1977)

² See KHRN Comments at 1

³ *Id.*

their lack of results in recruiting minority employees. A station owner in Oklahoma states in his comments that “it is next to impossible to try and induce minorities to play cowboy music in a very small market in Oklahoma”.⁴ An owner of stations in Illinois and West Virginia concludes from the efforts of his stations that “very few minorities have an interest in working in the broadcast industry, for whatever reason” and are drawn to work for minority-owned stations.⁵ It is ironic that these and other comments reveal attitudes among broadcasters that foster stereotypes which the guidelines are designed to dispel among the public. Clearly more, not less, guidance is warranted. In addition, these comments demonstrate that recruitment efforts may well stop if the EEO Rules are streamlined.

The comments also contain a wide range of proposals for streamlining the EEO Rules. Some commentators propose exempting stations based on market size.⁶ Other commentators oppose the use of market size but propose that the Commission adopt streamlining proposals based on number of employees.⁷ The U.S. Equal Employment Opportunity Commission (“EEOC”), in its comments, questions why market size and small local minority labor forces would be suitable qualifying factors for exemption from reporting and record keeping requirements.⁸ Other commentators oppose the Commission’s entire approach to streamlining. Sunbrook Communications, whose president is also Chairman of the NAB’s Small/Medium Market Radio

⁴ See KLAU Broadcasting, Inc. Comments at 2.

⁵ See Community Service Radio, Inc. (“Community Service”) Comments at 2.

⁶ See e.g. KWON Comments at 1

⁷ See e.g. Houston Christian Broadcasters, Inc. (“HCB”) Comments at 1-2.

⁸ EEOC Comments at 2.

Committee, contends that the system proposed by the Commission in the Notice is “a much more complicated system”.⁹ Other broadcasters seek exemption for particular categories of broadcasters such as religious broadcasters and noncommercial educational stations.¹⁰

A number of commentors support giving broadcasters credit for increased use of joint recruitment efforts. As demonstrated in AWRT’s initial comments, however, these efforts will only be successful if they are closely coordinated between the broadcasters and recruitment sources. The lack of consensus on appropriate streamlining proposals is striking and suggests that a collaborative negotiated rulemaking with best ensure effective, streamlined EEO Rules.

II. The Comments Filed Do Not Provide the Evidence Necessary to Streamline the Rules

Without additional evidence of the specific burden of EEO compliance, the EEO Rules can not be streamlined and upheld by the courts. The comments filed in response to the Notice generally do not quantify the burden of compliance with the EEO Rules. Several commentors cite the paperwork requirements as burdensome on a small staff.¹¹ Other commentors complain about the lack of results produced by their efforts.¹² All of the evidence, however, falls short of the specificity needed to develop a record that could support a change in the size standard for exemption from the EEO Rules or an exemption from the Rules based on market size. Indeed, the evidence provided by the comments is conflicting. Some broadcasters support a size

⁹ Sunbrook Communications (“Sunbrook”) Comments at 1.

¹⁰ HCB Comments at 2; National Religious Broadcasters Comments at 19.

¹¹ KYFM Comments at 1; HCB Comments at 2.

¹² KYFM Comments at 1; Community Service Comments.

exemption of 10 employees; other commentators suggest the appropriate level is 20 employees.¹³

As AWRT demonstrated in its initial comments, increasing the size standard from five to ten employees would exempt over 50% of the broadcast stations according to the FCC's statistics.¹⁴

The EEOC cautions against eliminating reporting and record keeping requirements that could make compliance actions more difficult and compromise a station's defense.¹⁵ Without specific evidence on the varying burden of EEO compliance on stations of differing size, selection of a new size standard for exemption from specific EEO compliance requirements would be arbitrary.

III. Conclusion

The evidence submitted in the record does not rise to the level or provide the specificity required to streamline the EEO Rules. Without this evidence, streamlining of the EEO Rules is inappropriate. The nature of the comments fuel the position that the current EEO guidelines are shopworn, and seriously in need of fortification. The Commission can proceed in its efforts to streamline its EEOC rules, however, by transforming this proceeding into a negotiated rulemaking. A negotiated rulemaking will provide all of the interested parties the opportunity to

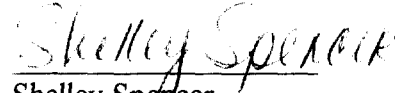
¹³ Sunbrook Comments at 5. Another station suggests that only stations with fifteen or more employees should be subject to full application of the EEO Rules. KRIG Comments at 1.

¹⁴ AWRT Comments at 9.

¹⁵ EEOC Comments at 2.

collectively and collaboratively address the EEO Rules and develop innovative solutions to reducing the perceived burden of EEO compliance without reducing efforts to recruit qualified women and minority candidates.

Respectfully submitted,
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CERTIFICATE OF SERVICE

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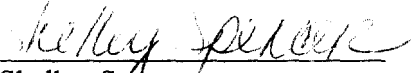
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